

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
WHITE PLAINS DIVISION

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IN RE

CHAPTER 11

SEARS HOLDINGS CORPORATION, ET AL

CASE NO. 18-23538 (RDD)

DEBTOR

(Jointly Administered)

MOTION DATE: February 14, 2019

MOTION TIME: 10:00am

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MEMORANDUM OF LAW IN SUPPORT  
OF MOVANTS MOTION FOR RELIEF FROM AUTOMATIC STAY

FACTS

This application is before the Court on Motion of Wells Fargo Bank, N.A. as servicing agent for U.S. Bank National Association, as Trustee for Citigroup Mortgage Loan Trust Inc., Asset-Backed Pass-Through Certificates, Series 2006-WMC1 (“Movant”), seeks relief from the automatic stay as to the property located at 241 Cooper Street, Brooklyn, New York 11207 (the “Premises”).

On September 23, 2005, Carlos Perez borrowed \$480,000.00 from WMC Mortgage Corp as evidenced by a note (the “Note”). Said Note is secured by a mortgage from Carlos Perez and Ruth Chiguano aka Ruth Chiquano on certain real property, commonly known as 241 Cooper Street, Brooklyn, New York 11207, and specifically described in said mortgage (the “Property”). The Mortgage was assigned from Mortgage Electronic Registration Systems, Inc. as nominee for WMC Mortgage Corp. to U.S. Bank National Association, as Trustee for Citigroup Mortgage Loan Trust Inc., Asset-Backed Pass-Through Certificates, Series 2006-WMC1

On February 20, 2004 Sears Roebuck and Company recorded a judgment lien against Carlos Perez and the Property in the amount of \$6,313.79 under Index # 65876/02

Sears Holdings Corporation, et al filed bankruptcy under case number 18-23538, which case is being jointly administered

POINT 1

This Movant is entitled to relief from the automatic stay as requested in the within motion.

The Movant has filed a motion for relief from the automatic stay with respect to the real property known as 241 Cooper Street, Brooklyn, New York 11207.

Section 362(d)(1) and (2) provide as follows:

(d) On request of a party in interest and after notice and a hearing, the Court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-

(1) for cause, including the lack of adequate protection of an interest in the Property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if-

- (A) the Debtor does not have any equity in such property;
- (B) such property is not necessary to an effective reorganization.

Section 362(d) is mandatory, not permissive. The Court shall grant relief from the stay for any of the reasons stated in the three subsections. In re Elmira Litho, Inc., 174 B.R. 892, 900 (Bk. Ct. S.D.N.Y. 1994); In re Touloumis, 170 B.R. 825, 827 (Bk. Ct. S.D.N.Y. 1994); In re Kleinman, 156 B.R. 131, 136 (Bk. Ct. S.D.N.Y. 1993); In re Diplomat Electronics Corp., 82 B.R. 688, 692 (Bk. Ct. S.D.N.Y. 1988).

Further, if any of the grounds for relief from stay apply the Court must grant the relief from stay.

Under Bankruptcy Code § 362(d)(1) relief may be granted for cause if the Debtor has failed to provide the secured creditor with adequate protection for its interest in the Property. Perez's mortgage is in default to Movant and as such the Movant is entitled to pursue its remedies under state law including foreclosure. Movant desires to continue its foreclosure on the premises due to the ongoing default by Carlos Perez under the Mortgage. Due to the default, Movant's security interest is not adequately protected and as such pursuant to 362(d)(1) cause exists to terminate the automatic stay to allow the Movant to proceed with the foreclosure.

Further, pursuant to 362(d)(2) the real property is not necessary to an effective reorganization of the Debtor. In conclusion, Movant requests that this Court grant its motion for relief from the automatic stay with respect to the real property as described in the motion.

Dated: December 28, 2018



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